Message

From: Goldmann, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2BF5B6F833EA46CCA6ABE2BB68961167-EGOLDM02]
Sent: 4/6/2017 11:13:11 PM
To: Brush, Jason [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ade1a32824404ed5a333dcd77f2dfc4a-JBRUSH]
Subject: FW: EPA/ADEQ timeline: Section 401 Water Quality Certification for the proposed Rosemont Mine

From: Goldmann, Elizabeth
Sent: Monday, June 22, 2015 3:32 PM
To: Woo, Nancy <Woo.Nancy@epa.gov>
Cc: Brush, Jason <Brush.Jason@epa.gov>; Jessop, Carter <JESSOP.CARTER@EPA.GOV>; Campbell, Rich <Campbell.Rich@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>
Subject: EPA/ADEQ timeline: Section 401 Water Quality Certification for the proposed Rosemont Mine

Nancy – Here is an EPA/ADEQ timeline regarding the Section 401 Water Quality Certification for the proposed Rosemont Mine.

Overview of 401 Water Quality Certification for the proposed Rosemont Mine

2011 -2014: EPA had regular conference calls with ADEQ regarding the proposed Rosemont Mine and the state's review of the project pursuant to §401 CWA.

April 7, 2014 : EPA provided formal comments to ADEQ on the Draft Section 401 Water Quality Certification. In summary, EPA determined that the draft certification and supporting information provide an insufficient basis from which to conclude that existing water quality will be maintained. We recommended that no 401 certification be issued unless the discharger can implement specific preventative actions that provide a high degree of confidence that designated uses will be maintained.

Our specific concerns are as follows:

- EPA believes that ADEQ's finding that the specific conditions and mitigation in the 401 certification will prevent water quality degradation in Davidson Wash and Cienega Creek is not justified and the risk of water quality contamination remains high:
- Sediment is a critical and under-analyzed water quality parameter;
- There will be a significant reduction in available assimilative capacity. There is inadequate detail or certainty about the prospective surface water mitigation program's ability to offset the reduction in available assimilative capacity;
- The uncertainty associated with the available modeling does not support ADEQ's conclusion that reductions in surface flows in Davidson Canyon and Upper Cienega Creek would be minimal;
- The scope and magnitude of impacts associated with the project have not been adequately presented;
- It is unclear whether corrective measures can be put in place to prevent the degradation of OAWs; and
- If our concerns are not addressed in the state's 401 certification, we expect to request the District Engineer to evaluate our concerns raised and documented both for purposes of the Corps public interest review (33 CFR 320.4(d)) and compliance with EPA's Guidelines at 40 CFR 230.10(b).

September/October 2014: EPA reached out to Linda Taunt, ADEQ, on two occasions to discuss EPA's comments on the draft 401 water quality certification and new information gathered by USFS on water quality. Ms. Taunt did not respond to EPA phone messages.

January 23 ,2015: During the monthly management meeting between ADEQ and EPA, Jane Diamond requested an update from Mike Fulton on the status of the draft 401 water quality certification. Mike stated ADEQ had an updated draft document. Jane Diamond requested a copy for review, but Mike Fulton refused to share it with EPA. Mike Fulton agreed to set up a meeting between the agencies to go over EPA's April 7, 2014 comments.

February 3, 2015 - ADEQ issued a 401 water quality certification for the Rosemont Copper Project stating the project will not violate applicable surface water quality standards. ADEQ did not contact EPA to discuss our concerns prior to issuance of the certification. Based on our review of the 401 certification, we continue to maintain that ADEQ's general conditions, specific conditions and mitigation in the 401 certification will not prevent water quality degradation in Davidson Wash and Cienega Creek and the risk of water quality contamination remains high. **See Summary of 401 cert. below.**

February 25, 2015: ADEQ/EPA conference call after-the-fact to discuss the 401 certification. EPA expressed disappointment that the call occurred after issuance of the 401 certification and the issues EPA addressed in our April 7, 2014 were largely ignored.

April 14, 2015: In a letter to Colonel Colloton, Corps, Jared Blumenfeld requested the Corps consider "other water quality aspects" when making the §404 permit decision pursuant to the Corps' public interest review at 33 CFR 320.4(d) and compliance with 40 CFR 230.10(b)(1). The letter states the certification is unlikely to provide sufficient measures to safeguard the water quality of Cienega Creek watershed and noted there are impacts of the project which may be outside the scope of the state's §401 certification review.

May 18, 2015: Letter from Hudbay to the Corps objecting to EPA's letter to the Corps dated April 14, 2015.

June 12 ,2015: ADEQ letter to EPA disagreeing with EPA's assessment of the 401 water quality certification, but also noting that there are issues outside the scope of what ADEQ is legally authorized to consider under Arizona state law.

401 Draft Water Quality Certification Summary (February 3, 2015)

In their **General Conditions,** ADEQ may request the Corps suspend, modify or revoke the CWA 404 permit if the 401 Cert. has been violated.
The certification also contains **Specific Conditions** including a Surface Water Mitigation Plan, Stormwater Management Plan and a plan to manage Sediment Loads.

Surface Water Mitigation Plan dated December 2014
Key Elements:

- **General Monitoring Component**: No monitoring is required under 401 Certification to maintain compliance, but RM proposes to provide ADEQ with the results and analysis conducted under other agency requirements (USFS).
- **Site Specific Data Review and Modeling Component**: This describes the surface water model **to be developed** in the future for the project.
- **Mitigation Component**: The surface water model that **will be developed** will be used to quantify changes in stormwater flow to Davidson Canyon and proactively mitigate or offset those changes, as needed.
- **Reporting Component**: Reports will be prepared quarterly and annually.

Surface Water Model

- **The surface water model is not yet developed.** There is no peer review etc... ADEQ is therefore "kicking the can down the road." It will be used as a predictive tool to quantify changes in surface water runoff from the project site based on stage development. To the extent these changes affect or have the potential to affect downstream water quality, ADEQ requests **mitigation** for these changes.

Mitigation

- **Water Rights Assessment** – RM will sever and transfer the youngest water right (1935 – 46 afy) at Pantano Dam and transfer it to a state agency. This is "paper water."
- **Closure of Stock Well in Davidson Canyon Wash** – This is a shallow hand-dug well and is part of the RM grazing allotment. Water is pumped as needed from the well for grazing. RM proposes to close it as mitigation. RM considers it a "wet water" replacement/offset. There is no data available on the amount of water in the well.
- **Cessation of Stock Watering at Questa Spring** – Currently, Questa Spring reports directly to a stock tank. RM proposes to close the tank and divert water back to natural system. There is no data on the amount of water diverted back to the natural system.
- **Closure of Stock Ponds and Tanks** – RM proposes to close 6 tanks and 2 ponds and replace them with wells and stock drinkers. No information on water rights. No data on the amount of water diverted back to natural system. This is still tentative given that these sites are considered biological resources (frog habitat). They claim an aggregate resource of 8.2 acre-feet, but not substantiated, and also go on to suggest that in the right storms events they can get as much as 25 afy out of them.